

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF TEXAS
3 WACO DIVISION

3 PROPECTUS TECHNOLOGY,) Docket No. WA 20-CA-101 ADA
4 LLC)
5 vs.) Waco, Texas
6 GOOGLE, LLC) June 11, 2020

7 TRANSCRIPT OF TELEPHONE CONFERENCE
8 BEFORE THE HONORABLE ALAN D. ALBRIGHT

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1 THE CLERK: Telephonic discovery hearing in Civil
2 Action 6:20-CV-101, styled, Profectus Technology, LLC vs.
3 Google, LLC.

4 THE COURT: If I could hear announcements from
5 plaintiff's counsel and then, defense counsel.

6 MR. ROSS: Yes, your Honor.

7 Good afternoon. This is Steven Ross. I'm lead
8 counsel for Plaintiff Profectus. And with me on the call
9 today is my co-counsel, Mr. Kirk Voss.

10 THE COURT: Welcome by phone to Waco.

11 And who for the defendant?

12 MS. AMSTUTZ: Good afternoon, Judge Albright.

13 This is Paige Amstutz with Scott, Douglass &
14 McConnico. With me is Dan Callaway with Farella, Braun &
15 Martel. And with us also is our client, Don Wong.

16 THE COURT: Thanks to each of you for being here
17 besides Ms. Amstutz. Especially I always appreciate it
18 when counsel -- not besides her, but I'm happy to have
19 her, as well. But I always appreciate it when inhouse
20 folks show up. I think that's very important.

21 So I've been looking over -- I looked over the
22 discovery issues that you all have. That doesn't mean I
23 could guess which one of you wants to go first, but I
24 guess since the plaintiff wants to get this information,
25 I'll let them say why, and then, I'll hear from opposing

15:47:39 1 counsel as to why they should not get it.

15:47:45 2 MR. ROSS: Thank you, your Honor. This is Mr.
15:47:46 3 Ross.

15:47:47 4 With the Court's permission, I will just proceed
15:47:51 5 with these issues in the order that they are set out in my
15:47:55 6 letter.

15:47:55 7 THE COURT: Okay.

15:47:57 8 MR. ROSS: The first issue is with respect to
15:48:00 9 Interrogatory No. 5, and this interrogatory asks for
15:48:05 10 Google to provide information regarding the various
15:48:08 11 economic incentives, such as tax breaks or tax abatements,
15:48:14 12 that it has received from governmental entities to either
15:48:18 13 relocate to or expand within the Western District of
15:48:23 14 Texas. So in that regard, we'd like to get information
15:48:28 15 regarding the governmental entity that extended those
15:48:32 16 incentives, the date of the incentives, the nature of the
15:48:36 17 incentives, and then, the dollar value of the incentives.

15:48:40 18 This goes directly to the public interest factors
15:48:45 19 and particularly the local interest in deciding local
15:48:51 20 cases at home. Obviously, the amount of money that a
15:48:56 21 governmental entity is willing to invest, if you will, in
15:49:02 22 a company such as Google is a measure of that government's
15:49:08 23 interest in the operations of Google within that -- within
15:49:12 24 that jurisdiction.

15:49:14 25 We think that's very relevant information, and

1 we've asked for it in the form of an interrogatory because
2 we believe that Google has this information collected and
3 relatively handy for tax purposes, if for no other reason.
4 And we think it would not be very burdensome to answer
5 that interrogatory.

6 THE COURT: Before I hear from counsel for
7 Google, I will tell you, this is an interesting discovery
8 request. I don't think I've seen it before, but I'm not
9 doing discovery requests anymore. But I know that when I
10 was arguing these cases, on one side or the other, I did
11 think it was important. This kind of information had some
12 relevance. You know, it certainly has some relevance, for
13 example, that, you know, Google has a substantial building
14 and a number of employees in Western District of Texas,
15 for example, in Austin.

16 But it seems to me that to the extent this
17 information is relevant, the only information -- the only
18 buckets of information that would be relevant to this case
19 opposing a transfer would be funds that Google received
20 either from local entities -- I'm not going to -- I guess
21 it could be city of Austin, but it could be anybody -- or
22 the state of Texas with the intent to incentivize Google
23 to move into a location that's within the Western
24 District.

25 So I will start off by telling defense counsel

1 for Google, I am sympathetic at least with those two
2 buckets. So tell me why I'm wrong.

3 MR. CALLAWAY: Thank you, your Honor. This is
4 Dan Callaway for Google.

5 We view this discovery request and the public
6 interest justification for it as being very attenuated
7 with respect to public interest. And to be specific,
8 Profectus has requested and Google has agreed to produce
9 evidence on, as you mentioned, the size of its offices,
10 the number of employees, the role of those employees as it
11 relates to the accused products; and in view of that
12 evidence, which Google has agreed to produce, you know,
13 what does it add whether Google has received a tax break.
14 You know, there's no statement of a nexus in this
15 discovery request between any tax break and the actual
16 accused products.

17 So this appears to be duplicative when it comes
18 to public interest of the sort of facts on the ground
19 about, you know, where are the buildings, how many folks
20 are working there, and how many folks are working on the
21 accused products.

22 THE COURT: Well, I don't know that I agree with
23 you. And, of course, I'll let the plaintiff lawyer take
24 this up himself. But it seems to me that the local
25 interest is reflected both by the investment that Google

1 is making or any defendant is making in the district. And
2 then, I might agree with you that, ultimately, it doesn't
3 move the needle one way or the other. But when the
4 question is whether or not the plaintiff should be
5 entitled to discovery on something, I don't know that that
6 is the right standard.

7 Seems to me, the right standard for discovery is
8 unless it's overly burdensome -- and I didn't hear that
9 argument -- that it could be relevant. This information
10 sounds at least relevant to me. It may or may not move
11 the needle, but explain to me why this information -- I'll
12 make something up.

13 You know, if the city of Austin gave Google a tax
14 break of, I'll just say, \$1 to locate their building not
15 only in the Western District, but to do it in Austin, and
16 not only in Austin, but to do it in downtown Austin to --
17 you know, because it's such a phenomenal company and they
18 want it to be a tenant, they want the world to see, as
19 they're running along Town Lake, a building that has a big
20 Google sign on it.

21 Why isn't that at least relevant? Why isn't that
22 information relevant?

23 MR. CALLAWAY: I hear what you're saying, your
24 Honor. I think that's why I started out by saying this is
25 a very attenuated way of measuring the public interest in

1 view of the facts on the ground. I would also say, if it
2 comes to a specific tax break from Austin or from the
3 state to locate in a particular place, that would be
4 public record. So we would ask, you know, why is Google
5 then burdened with gathering that information if it's
6 equally available to both parties?

7 THE COURT: My guess is that that's not a big
8 burden. My guess is, Google has a lot -- is going to
9 suffer a lot bigger burdens in this case. And I don't
10 mean to mock you, I'm just saying it seems to me that -- I
11 mean, sure that plaintiff can look that stuff up. But,
12 you know, the difference is that if they decide to put it
13 in their motion or their response to your motion, as
14 opposed to it saying that there are public reports that
15 blah, blah, blah, blah, blah, what you have is that Google
16 has provided us with information that said this, I think
17 that's a different caliber of information.

18 I think it will be -- I think the Court would be
19 much more willing to rely on something -- some information
20 that was produced by Google and verified by Google. I
21 think it, frankly, would benefit you to have the correct
22 number, rather than press reports, which might or might
23 not be right.

24 At any rate, I'm going to allow -- I'm going to
25 order Google to -- I want this kept confidential. Or I

15:55:24 1 don't know where y'all are at on a protective order. I
15:55:26 2 want this information to be confidential. It doesn't
15:55:31 3 sound to me like it needs to be attorneys'-eyes-only, but
15:55:34 4 it should be confidential.

15:55:36 5 And I would like the information to be produced
15:55:39 6 to the plaintiff both to the extent that Google received
15:55:47 7 any either affirmative money or any kind of tax break that
15:55:51 8 incentivized it to locate in the Western District of
15:55:55 9 Texas, and/or if the state of Texas did the same thing
15:55:59 10 with respect to Google in locating, or building anything,
15:56:06 11 or moving, anything that indicates a local interest in the
15:56:11 12 Western District either on the part of a municipal entity
15:56:19 13 that is within the district or the state for something
15:56:21 14 where Google benefits within the district, I'll order that
15:56:23 15 that be produced in a confidential manner.

15:56:28 16 What is the next topic?

15:56:33 17 MR. ROSS: Your Honor, once again, this is Mr.
15:56:35 18 Ross for the plaintiff.

15:56:35 19 The next topic is our Request For Production No.
15:56:38 20 10, and this requests a copy of each declaration, dated
15:56:42 21 from January 1, 2017 to the present, that was signed by a
15:56:47 22 Google employee and filed in court in support of a motion
15:56:52 23 by Google to transfer venue in a patent case. And, your
15:56:58 24 Honor, this goes to the informational asymmetry that the
15:57:03 25 Court touched on in the Parus decision. This is

1 information that is uniquely within Google's possession.
2 It tests, I guess, Google's understanding or application
3 of the word "inconvenient." Obviously inconvenient is a
4 very subjective term, and it can mean different things to
5 different people and different contexts.

6 So what we'd like to do with this is to evaluate
7 the circumstances under which Google has sought to
8 transfer other cases in other courts to gauge what Google
9 feels is inconvenient and then, determine whether this is
10 something that is, indeed, done on a case-by-case basis,
11 based on the facts of each case.

12 THE COURT: So -- and I hate to sound dumb, but I
13 might.

14 Are you asking for the attachments, the
15 declarations that were contained in a motion to transfer
16 where, for example, here, Google has been sued in the
17 Western District, they are trying to get out of the
18 Western District? Or are you -- is it some -- is it a
19 declaration where Google has filed the suit and you want
20 the declarations of people who have transferred -- tried
21 to transfer the case against Google?

22 MR. ROSS: Your Honor, it was -- it's actually
23 the former. It's -- I'm sorry if the request wasn't clear
24 enough. But this is situations where Google has sought to
25 transfer the case out of the court in which it was filed.

15:58:52 1 THE COURT: Let me hear from Google on that.

15:58:55 2 MR. CALLAWAY: And to be clear, your Honor, as we
15:58:58 3 read Request For Production No. 10, it's asking for a copy
15:59:01 4 of each declaration, signed by a Google employee,
15:59:05 5 advocating for supporting a transfer motion in a patent
15:59:07 6 case, you know, anywhere. So whether it's a motion to
15:59:10 7 transfer from the District of Maine or the District of
15:59:13 8 Delaware, or Western District, Eastern District, any
15:59:17 9 district. And that goes to our objection, which is, let's
15:59:21 10 keep the game on the baseball diamond here. This motion
15:59:24 11 is about the instant facts, you know, the availability of
15:59:27 12 evidence to this case and this district.

15:59:29 13 So this request isn't that. This request by
15:59:34 14 Profectus is saying, we want to learn about Google's
15:59:36 15 litigation strategy or we want --

15:59:38 16 THE COURT: I'm with you. I mean -- and I agree,
15:59:42 17 actually.

15:59:45 18 So what is your position with respect to how far
15:59:48 19 back the plaintiff is seeking?

15:59:53 20 MR. CALLAWAY: Well, this is an awful lot of
15:59:55 21 material they're looking for. When I looked before the
16:00:00 22 call, I think I counted 160 cases that Google has been
16:00:05 23 sued on patents in the last three-and-a-half years, which
16:00:07 24 is the timeframe requested here. I don't know, as I stand
16:00:10 25 here, how many of those have involved a motion to

16:00:12 1 transfer, but it's an awful lot of cases. And --

16:00:14 2 THE COURT: Sure.

16:00:15 3 MR. CALLAWAY: You know, obviously we see those
16:00:17 4 declarations in those other cases about other products and
16:00:20 5 other patents as being irrelevant here, you know, full
16:00:25 6 stop.

16:00:27 7 THE COURT: Okay. I'm going to grant the
16:00:29 8 request. I'm going to limit those declarations to cases
16:00:34 9 where there was a motion to transfer either from the
16:00:37 10 Western District of Texas or the Eastern District of
16:00:41 11 Texas, and I think the date was January 1st of 2017.
16:00:45 12 That's 17, 18, 19, 20 -- I think from January 1st of 2018.
16:00:51 13 I think three years would be a fair representative number.

16:00:56 14 MR. CALLAWAY: And, your Honor, if I could for
16:00:59 15 Google.

16:00:59 16 THE COURT: Yes, sir.

16:00:59 17 MR. CALLAWAY: Some of these declarations are
16:01:01 18 going to be shot through with very confidential
16:01:03 19 information. So I am chagrinned to be producing this
16:01:09 20 stuff, but I take your ruling as it is. But I just want
16:01:13 21 assurance from the plaintiff that we'll move forward on a
16:01:16 22 protective order that will protect very sensitive
16:01:19 23 information.

16:01:19 24 And I would even ask if we might redact some of
16:01:23 25 the confidential information in these declarations that

16:01:25 1 will be entirely, you know, technical in nature or related
16:01:29 2 to other products.

16:01:32 3 THE COURT: Okay. Let me say two things about
16:01:33 4 that. One, when you produce these, these will be produced
16:01:38 5 under attorneys'-eyes-only; and if the plaintiff wants to
16:01:42 6 use them for some reason, they'll have to let the Court
16:01:45 7 know what they want to use out of them and why. And two,
16:01:49 8 to the extent that there is an explanation of technology
16:01:54 9 that is irrelevant in any way to the technology that --
16:01:59 10 for example, if the case in Austin was on Google Maps and
16:02:06 11 this is on Search or, you know, whatever else, you could
16:02:10 12 certainly redact the technical information. And if the
16:02:15 13 plaintiff gets it and thinks that's unfair, then the
16:02:20 14 plaintiff will let me know they have an issue with a
16:02:22 15 specific one.

16:02:25 16 MR. CALLAWAY: Understood, your Honor.

16:02:30 17 THE COURT: Okay. What's next?

16:02:35 18 MR. ROSS: Next, we would be moving on to the
16:02:36 19 topics in Profectus' Rule 30(b)(6) deposition notice, and
16:02:41 20 this wraps in some of the other requests, although
16:02:44 21 indirectly. Other document requests that Google has --
16:02:50 22 that Profectus has served on Google asks for copies of
16:02:55 23 agreements with electrical providers, electricity
16:03:01 24 providers within the state of Texas.

16:03:03 25 For example, we understand that Google has

16:03:05 1 entered into a partnership with Reliant Energy, which is
16:03:09 2 based in Texas. And according to that partnership, Google
16:03:14 3 will provide these accused devices to Reliant, and Reliant
16:03:19 4 then provides the devices to its customers, which use them
16:03:25 5 in their homes for controlling their heating and cooling
16:03:29 6 systems and monitoring their electricity usage.

16:03:33 7 Another request goes to --

16:03:35 8 THE COURT: Let me stop you there.

16:03:38 9 So I could see a nexus -- I know who Reliant is.
16:03:45 10 I can see a nexus in terms of the fact that it may mean
16:03:49 11 that there are third-party witnesses or documents, to the
16:03:53 12 extent documents still exist in the world from Reliant.
16:03:56 13 But I'm not sure why you need what you're asking for
16:04:03 14 unless Google is going to -- well, maybe I should ask
16:04:07 15 Google.

16:04:08 16 It seems to me that -- I'm actually on kind of
16:04:13 17 Google's side here where it seems to me, the relationship
16:04:15 18 between Google and Reliant, there's probably sufficient
16:04:18 19 information about in -- online and in the press that you
16:04:23 20 could accomplish what you need to in this motion, or
16:04:27 21 responding to the motion, without getting this information
16:04:30 22 from Google.

16:04:30 23 So what is it that you want from Google about
16:04:33 24 their relationship with Reliant that is probably not
16:04:36 25 publicly available?

16:04:39 1 MR. ROSS: Well, your Honor, I apologize. I
16:04:41 2 think I -- I was providing context there.

16:04:44 3 THE COURT: Okay.

16:04:46 4 MR. ROSS: The actual issue before the Court.

16:04:48 5 THE COURT: Okay.

16:04:49 6 MR. ROSS: Relates to our topic number two, which
16:04:53 7 concerns documents produced by Google in response to
16:04:58 8 Profectus' document requests. Okay. We've asked for
16:05:04 9 agreements between Google and Reliant, and to use them as
16:05:08 10 an example, we'd like to be able to ask a Google
16:05:12 11 representative about those agreements to provide context
16:05:17 12 and help us understand the nature of the arrangement.
16:05:25 13 That's really the extent of this. Google --

16:05:31 14 THE COURT: Who are you --

16:05:31 15 MR. ROSS: I'm sorry.

16:05:32 16 THE COURT: No. It's me that's interrupting. I
16:05:33 17 apologize.

16:05:34 18 Who is it that you're going to ask these
16:05:36 19 questions to? Is there either going to be a deposition of
16:05:40 20 a corporate representative prior to your filing the
16:05:44 21 response?

16:05:45 22 MR. ROSS: Yes, your Honor. We've served the
16:05:47 23 interrogatories and document requests. And we have also
16:05:51 24 served a Rule 30(b)(6) deposition notice, and that
16:05:54 25 deposition will be scheduled at a mutually convenient time

16:05:58 1 and place after we receive the documents and other
16:06:01 2 discovery from Google.

16:06:04 3 THE COURT: Let me ask counsel for Google. I
16:06:07 4 understand the thrust of what they want.

16:06:13 5 Is there a representative document or two that
16:06:17 6 you could provide them that would enable them to question
16:06:21 7 -- intelligently question a Google witness about? Because
16:06:26 8 it seems to me -- again, I'm trying to protect the Google
16:06:29 9 witness who might have to be schooled up on a number of
16:06:32 10 topics and come in there. It seems to me, the Google
16:06:36 11 person would be better off if there were actual documents
16:06:40 12 in front of him that he could rely on to make sure he gets
16:06:42 13 the answers right with respect to a relationship with
16:06:45 14 Reliant.

16:06:45 15 But tell me what you think is an appropriate
16:06:49 16 response here to that request.

16:06:52 17 MR. CALLAWAY: Thank you, your Honor.

16:06:52 18 And just to unthread this a few more loops, we
16:06:56 19 have the same reaction that your Honor expressed regarding
16:06:59 20 the contracts with Reliant and other parties, but in the
16:07:04 21 spirit of compromise, we did agree to respond to those
16:07:08 22 document requests and go ahead and produce those
16:07:11 23 confidential agreements.

16:07:11 24 So where we are now is, Profectus is saying, hey,
16:07:15 25 on top of that, we want to have a Google witness come and

1 testify about these agreements, which puts us, again, in
2 the situation you expressed, which is we've gotta school
3 up a witness, folks are working from home, this might --
4 you know, the witness who knows about these agreements
5 that might be somebody other than the witness who knows
6 about the number of employees in the Austin office.

7 So the position we've taken here is, let these
8 agreements speak for themselves. This is a considerable
9 document production that we're offering with respect to
10 these agreements, and having to offer up a 30(b)(6)
11 witness on top of that seems duplicative and pretty
12 burdensome.

13 THE COURT: I think I'm with you on that one. I
14 think if you had produced the exhibits for the good
15 they're going to do in this response to the motion, I
16 think you have everything you need. I mean, it's only
17 going to have so much impact, and I don't know that
18 anything that a witness says would add to that.

19 I'll tell you this, though. Here's what we're
20 going to do and it will sound like I'm cutting the baby in
21 half. Maybe I am. I'm going to allow -- I'm going to
22 deny the request for a deposition at this point. I don't
23 know how or even whether the plaintiff will include
24 anything about that information in their response to the
25 motion to transfer.

1 If in their response, in Google's reply to the
2 response, if Google responds in a way to anything that has
3 to do with Reliant Energy where the plaintiff feels like
4 it goes outside of what's contained in what they have
5 access to in the documents, then you guys chat first and
6 then, call me. I will definitely make sure that the
7 plaintiff has as much information as it needs to respond
8 to any position that Google takes with respect to this
9 really pretty narrow issue that sounds to me like we're
10 getting ahead of that right now if you have the
11 agreements.

12 What else do we have to take up?

13 MR. ROSS: Well, your Honor, I understand the
14 Court's ruling about not having a deposition at this
15 point. I do have one request, and that is that topic four
16 in my letter, it related to a -- what had been a Rule
17 30(b)(6) deposition topic, and let me just read that to
18 you. It's from January 1, 2017 to the present. The
19 amount of business travel on a trips-per-year basis to
20 Google's facilities in the Western District of Texas by
21 Google's employees who are based at Google's facilities in
22 the Northern District of California.

23 I intended to ask that in a Rule 30(b)(6). If
24 your Honor declines to allow a 30(b)(6) deposition at this
25 point, my request would be if we could convert that over

16:10:29 1 into an interrogatory that Google could answer for us.

16:10:34 2 THE COURT: I think that that is an extremely
16:10:37 3 relevant issue in my decision about whether or not I could
16:10:42 4 transfer the case.

16:10:43 5 And so, I am going to allow you to transform that
16:10:47 6 into an interrogatory. And to the extent you need
16:10:54 7 specific documents, I would think in a very narrow manner,
16:10:59 8 there might be documents, or a spreadsheet, or something
16:11:01 9 that shows that in lieu of a deposition, I think that's
16:11:05 10 totally fair. But I think that that's a very pertinent --
16:11:10 11 I think that's one of the most important factors the Court
16:11:13 12 will consider.

16:11:16 13 MR. CALLAWAY: Your Honor, if I might pose some
16:11:18 14 objections, if only for the record, on behalf of Google.

16:11:20 15 THE COURT: Please do. Yeah, yeah, I definitely
16:11:23 16 want you to protect the record.

16:11:24 17 MR. CALLAWAY: With respect to -- this is
16:11:26 18 30(b)(6) topic five, we do believe this is not a relevant
16:11:32 19 request because the thrust of this is, how often do Google
16:11:35 20 employees fly to Texas, right? But that doesn't really
16:11:40 21 measure anything, except the size of the company, which
16:11:41 22 shouldn't be relevant to the 1404 analysis. This goes to
16:11:46 23 how often do folks fly from California to Texas. It
16:11:50 24 doesn't necessarily bear on the particular inconvenience
16:11:53 25 of any one witness whose -- you know, whose inconvenience

16:12:00 1 legally is measured by the so-called hundred-mile rule.

16:12:02 2 And, you know, as a logical matter, just because
16:12:05 3 one guy makes the trip ten times, it doesn't make it any
16:12:08 4 more convenient for the other guy to make it. So in our
16:12:11 5 view, that shouldn't weigh on the 1404 analysis.

16:12:13 6 THE COURT: I understand. You and I respectfully
16:12:17 7 disagree pretty strongly on that. So -- and I'm not
16:12:25 8 saying you're wrong. Actually, maybe at some point, the
16:12:27 9 circuit will help all of us decide whether or not that's
16:12:31 10 important or not and actually discuss it.

16:12:35 11 But I'm going to allow the plaintiff to send
16:12:37 12 interrogatory and a request for production with respect to
16:12:40 13 that issue.

16:12:41 14 Anything else?

16:12:43 15 MR. ROSS: Your Honor, this is Mr. Ross. I don't
16:12:46 16 have anything else at this point.

16:12:48 17 THE COURT: Anything for Google?

16:12:53 18 MR. CALLAWAY: I do think we skipped over one
16:12:57 19 request that was in our materials, Steve. I don't want to
16:13:01 20 let it go unsaid and leave uncertainty as to which way we
16:13:05 21 wound up on that, and that is 30(b)(6) topics numbers six
16:13:10 22 and seven. I don't want to speak out of turn, but are we
16:13:13 23 still raising that to the Court?

16:13:15 24 MR. ROSS: Well, my understanding is, the Court
16:13:19 25 doesn't want us to do a Rule 30(b)(6) deposition notice.

16:13:23 1 So we won't be pressing that at this point unless we have
16:13:27 2 something else change and we need to go back to the Court
16:13:30 3 for -- to revisit the issue.

16:13:33 4 THE COURT: Yeah. And I don't know -- I'm sorry
16:13:35 5 to interrupt you, too. That I don't know what those two
16:13:38 6 are, off the top of my head. I have it here on my
16:13:41 7 computer, but I don't have it immediately in front of me.

16:13:45 8 Here's the way I see it is, I think the plaintiff
16:13:50 9 ought to have access to as much information as it needs to
16:13:55 10 respond to anything that Google argues to me. So if in
16:14:00 11 their reply, the plaintiff -- or if in responding to the
16:14:06 12 motion, or if in responding to the reply to your response,
16:14:12 13 the plaintiff feels like they have been prejudiced by not
16:14:15 14 having access to information that Google has, then I'm
16:14:19 15 going to allow you to get that either from an
16:14:21 16 interrogatory, or a 30(b)(6), or whatever.

16:14:24 17 I'm just trying to say that that's what I -- I
16:14:31 18 want to make sure you have that access, but I don't think
16:14:33 19 we need to go beyond that because you're just responding
16:14:36 20 to their motion and evidence and arguments. And so,
16:14:40 21 that's the balance I'm trying to strike here. If in
16:14:42 22 either of those two 30(b)(6) topics, you think you need
16:14:47 23 information to respond to the motion that Google filed, or
16:14:51 24 if after you get the reply, you need it for that reason,
16:14:55 25 you need to make sure I'm aware of that and I'll take it

16:14:59 1 up in that context.

16:15:04 2 MR. ROSS: Yes, your Honor. I understand that.

16:15:05 3 And certainly after we get their documents and we
16:15:08 4 review them, if it does appear that the circumstances have
16:15:14 5 changed, we will certainly alert the Court and ask for
16:15:19 6 leave to do that deposition.

16:15:21 7 THE COURT: Okay. Do it sooner, rather than
16:15:23 8 later, because in this age of COVID, I want to make sure
16:15:28 9 we can make arrangements to get it done right. And, of
16:15:31 10 course, I'm equally concerned about protecting Google and
16:15:34 11 their folks, and so, I want to make sure that if I allow
16:15:38 12 you to do discovery, it's discovery both that's necessary
16:15:42 13 and it's done in a way that is, you know, prophylactic for
16:15:48 14 everyone involved.

16:15:49 15 So let me know as soon as you need help, if you
16:15:52 16 ever do need help, and we'll get back on a phone call like
16:15:55 17 this, and, of course, you know, I'll hear from both sides
16:15:57 18 and try and do whatever I can to make sure that both sides
16:16:02 19 are treated fairly.

16:16:03 20 So anything else from the plaintiff?

16:16:05 21 MR. ROSS: No, your Honor.

16:16:07 22 THE COURT: Anything else from counsel for
16:16:09 23 defendant?

16:16:10 24 MR. CALLAWAY: Just briefly, your Honor.

16:16:12 25 THE COURT: Yes, sir.

1 MR. CALLAWAY: With respect to RFP 10, the
2 declarations that were related to other transfer motions,
3 I understood your ruling as we discussed it. And I'm
4 reminded by my co-counsel to ask, with respect to
5 redactions, with respect to protecting confidential
6 information, some of these declarations will have
7 technical information, which you mentioned redacting, and
8 some of them, on top of that, will likely have personnel
9 information that could be sensitive or confidential and
10 which we would view as not pertinent to the purpose of
11 their production here.

12 So I would ask if there's personnel information
13 on unrelated technology in those transfer declarations,
14 can we go ahead and redact that, too?

15 THE COURT: I think -- and I'll hear from the
16 plaintiff in a second. I think the only information that
17 is relevant about personnel that you need to produce with
18 these is what the person does and where they are located
19 for Google doing it, which I don't think -- doesn't seem
20 to me to be overly invasive. And so -- because I'm sure I
21 could look up for most of the Google people, you know,
22 people's names and what they do.

23 And so, if -- you can -- as far as I'm concerned,
24 you can redact everything besides that about their person
25 -- about personnel.

16:17:34 1 MR. CALLAWAY: Understood.

16:17:36 2 THE COURT: Now, again, if the plaintiff gets
16:17:41 3 something and he finds something particularly, for lack of
16:17:44 4 a better word, curious or interesting and in a specific
16:17:49 5 case, he wants to articulate to you first, and then, to me
16:17:53 6 last, why there might be additional information he wants,
16:17:57 7 I would urge Google to be, you know, as generous as you
16:18:02 8 can be while still protecting an employee.

16:18:05 9 If the plaintiff can articulate, I'd like to know
16:18:07 10 these, you know, these three things and they all seem to
16:18:10 11 be the kind of things that the Google employee would tell
16:18:15 12 someone at a cocktail party, or a job interview, or
16:18:20 13 something like that, I think you probably ought to provide
16:18:22 14 it to him. But obviously that's entirely up to each one
16:18:24 15 of you to make that decision and if you have -- if you
16:18:27 16 have a disagreement, just let Josh Yi know and I'll hear
16:18:30 17 both sides.

16:18:33 18 MR. ROSS: Very well. We understand, your Honor.
16:18:37 19 Thank you very much.

16:18:37 20 THE COURT: These questions -- when I'm answering
16:18:39 21 these questions, they're very helpful because I can refine
16:18:43 22 what it is I'm ordering and make sure that you guys don't
16:18:45 23 have to tussle over it both in -- in good faith because I
16:18:49 24 didn't think to tell you, you know, what the parameters
16:18:52 25 were. So I very much appreciate. My guess is, I know

16:18:57 1 which local counsel made that suggestion and you made a
16:19:00 2 great choice in hiring her.

16:19:02 3 I'm always glad when people ask for questions for
16:19:07 4 clarification because I want to make sure you guys
16:19:08 5 understand what I'm ordering.

16:19:10 6 Anything else for Google?

16:19:11 7 MR. CALLAWAY: I don't think so, your Honor.
16:19:14 8 Thank you.

16:19:15 9 THE COURT: Okay. You guys, be safe out there
16:19:17 10 and be well. And I look forward to seeing you all at some
16:19:20 11 point again either in Austin or in Waco. Have a good
16:19:26 12 afternoon.

16:19:27 13 MS. AMSTUTZ: Thank you, Judge.

16:19:29 14 MR. CALLAWAY: Thank you.

15 MR. ROSS: Thank you, your Honor.

16 (End of proceedings.)

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UNITED STATES DISTRICT COURT)
WESTERN DISTRICT OF TEXAS)

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